

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re:

SUNEDISON, INC., *et al.*,

Case No. 16-10992 (SMB)

Reorganized Debtors.<sup>1</sup>

Chapter 11

SUNEDISON LITIGATION TRUST,

Adversary Proceeding No. 18-01433 (SMB)

Plaintiff,

v.

GENERAL ELECTRIC COMPANY,

Defendant.

**AFFIDAVIT IN SUPPORT GENERAL ELECTRIC COMPANY'S MOTION FOR AN  
ORDER SEALING EXHIBIT "A" TO THE COMPLAINT**

STATE OF NEW YORK     )  
                                  )ss:  
CITY OF SCHENECTADY    )

<sup>1</sup> The Reorganized Debtors, along with the last four digits of each Reorganized Debtor's tax identification number are: SunEdison, Inc. (5767); SunEdison DG, LLC (N/A); SUNE Wind Holdings, Inc. (2144); SUNE Hawaii Solar Holdings, LLC (0994); First Wind Solar Portfolio, LLC (5014); First Wind California Holdings, LLC (7697); SunEdison Holdings Corporation (8669); SunEdison Utility Holdings, Inc. (6443); SunEdison International, Inc. (4551); SUNE ML 1, LLC (3132); MEMC Pasadena, Inc. (5238); Solaicx (1969); SunEdison Contracting, LLC (3819); NVT, LLC (5370); NVT Licenses, LLC (5445); Team-Solar, Inc. (7782); SunEdison Canada, LLC (6287); Enflex Corporation (5515); Fotowatio Renewable Ventures, Inc. (1788); Silver Ridge Power Holdings, LLC (5886); SunEdison International, LLC (1567); Sun Edison LLC (1450); SunEdison Products Singapore Pte. Ltd. (7373); SunEdison Residential Services, LLC (5787); PVT Solar, Inc. (3308); SEV Merger Sub Inc. (N/A); Sunflower Renewable Holdings 1, LLC (6273); Blue Sky West Capital, LLC (7962); First Wind Oakfield Portfolio, LLC (3711); First Wind Panhandle Holdings III, LLC (4238); DSP Renewables, LLC (5513); Hancock Renewables Holdings, LLC (N/A); EverStream HoldCo Fund I, LLC (9564); Buckthorn Renewables Holdings, LLC (7616); Greenmountain Wind Holdings, LLC (N/A); Rattlesnake Flat Holdings, LLC (N/A); Somerset Wind Holdings, LLC (N/A); SunE Waiawa Holdings, LLC (9757); SunE Minnesota Holdings, LLC (8926); SunE MN Development Holdings, LLC (5388); and SunE MN Development, LLC (8669). The address of the Reorganized Debtors' corporate headquarters is Two CityPlace Drive, 2nd floor, St. Louis, MO 63141.

Giovanni Milanese, being duly sworn, deposes and says:

1. I am employed by General Electric Company ("GE"). I am employed as Commercial Leader, Onshore Wind, GE Renewable Energy. In that capacity, I am responsible for transaction details related to all technical, financial, and commercial aspects for the execution of sales of wind power generation equipment. In that capacity, I am familiar with the contract currently filed as Exhibit A to the Complaint in the above referenced action. (Dkt. No. 1-1, the "Contract").

2. I have personal knowledge of the confidential, proprietary, competitively sensitive, or trade secret nature of the Contract and the information contained therein. I have personal knowledge of efforts taken by GE to maintain the secrecy of the Contract through direct contact with these efforts and through my review of these efforts with other employees who work directly with these efforts.

3. GE is requesting an order sealing the currently filed, or, in the alternative, replacing the Contract with a redacted copy of the Contract because the Contract is confidential, proprietary, competitively sensitive, or trade secret information.

4. The form of the Contract is confidential and proprietary template developed by GE over many years and with input from both internal and outside counsel to best protect GE's interests. The form of the Contract itself could be utilized by a competitor without the costs GE incurred developing the form.

5. The form of the Contract, not just its content, has commercial value and for that reason, GE made efforts to maintain confidentiality of the entire Contract, not just certain of its terms, by including a non-disclosure provision which, subject to certain exceptions, designates the Contract as

confidential and proprietary information and restricts either party thereto from publicly disclosing the Contract or its terms and certain other information concerning related matters. (Ex. B § 2-13.) For this reason, the entire Contract, not certain terms, should be protected from public disclosure.

6. Should the entire Contract not be deemed commercial information, the redacted version of the Contract annexed to the motion as Exhibit B should replace the currently filed Contract. The redacted information consists of commercial terms in the Contract, including liquidated damages provisions, warranty and guarantee provisions, insurance provisions, payment provisions, delivery terms, and performance terms currently used by GE (the "Redacted Information".)

7. The Redacted Information is a compilation of information from confidential and proprietary template agreements developed by GE.

8. The Redacted Information is known only to certain individuals. Specifically, GE controls access to the Redacted Information and only allows access to those individuals with a legitimate need to know, to use and to act upon this information.

9. The Redacted Information is being used in the construction of wind power facilities and in the production of electricity. Such wind power facilities and such electricity have commercial value.

10. The Redacted Information has commercial value. The sale of wind turbine generators takes place in a competitive market and commercial terms such as liquidated damages, warranty and guarantee, insurance, and payment provisions, as well as delivery and performance terms are negotiated items that affect the price and value of GE's turbines. The disclosure of deal-specific



terms to its competitors or potential customers would put GE as at a great commercial disadvantage.

11. Access to the Redacted Information would give its users an opportunity to obtain business advantage over GE by becoming privy to heavily negotiated and otherwise confidential deal specifics.

12. The Redacted Information is not generally known outside the Debtors, Plaintiff and their affiliates, counsel and consultants, and GE. The Redacted Information is only provided by GE to certain persons and parties who have a legitimate need to review the information. This is limited outside of GE to its legal counsel and confidential consultants.

13. The Redacted Information has been the subject of efforts that are reasonable under the circumstances to maintain its secrecy. GE's internal data standards and acceptable use of information resources policies and procedures are in place to ensure that access is limited and to minimize the possibility that the Redacted Information becomes public.

14. The Redacted Information is highly valuable to GE and its competitors. Knowledge of the Redacted Information by other wind turbine generator manufacturers would enable these businesses to enjoy an unfair competitive advantage because of knowledge of the benchmarks established in the Redacted Information.

15. GE has devoted considerable time and resources to developing the Redacted Information. The results of these activities warrant protection so that GE derives the full value from these efforts and are not disadvantaged in negotiating future transactions of this kind.

16. The Redacted Information is not readily ascertainable by others through normal or proper means. No reasonable amount of legitimate independent research could produce the Redacted Information.

Dated: July 6, 2018  
Schenectady, New York

  
Giovanni Milanese

State of New York       )  
County of Schenectady )

Signed and sworn to (or affirmed) before me on July 6, 2018 by Giovanni Milanese.

  
\_\_\_\_\_  
(Signature)

(Stamp or Seal)

Notary Public (or title/rank of other officer)

My Commission Expires:

KEITH WARNER

NOTARY PUBLIC IN THE STATE OF NEW YORK  
QUALIFIED IN GREENE COUNTY, NO. 01WA6341458  
MY COMMISSION EXPIRES MAY 2, 2020